

**REMARKS**

Claims 12-14, 16-22, 26-29 and 33-38 are pending. The amendments to claims 12, 16, 26 and 33 are all grammatical changes for clarity which are supported throughout the specification. No new matter is added.

**The disclosure is objected to because of the following informalities: The specification recites "novel" on pages 25 and 34. It is suggested that the term "novel" be deleted from the language of the specification. (Office Action, Page 2)**

The term "novel" has been deleted from the specification. No new matter has been added.

**Claims 12-14, 16-22, 26-29, and 33-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. (Office Action, Page 3)**

Claims 12, 16, 26 and 33 have been amended to address the issues raised in the rejection. No new matter has been added.

**Claims 12-14, 16-22, 26-29, and 33-38 are rejected under 35 USC § 102 (b) as being anticipated by Soma et al (US 5,494,819), as evidenced by Inagawa et al (Homeostasis as regulated by activated macrophage. (Office Action, Page 5)**

This anticipation rejection is based on the disclosure in col.5, lines 45-55 of Soma:

**EXAMPLE 1**

- 1) In a 50 ml coning tube, there was charged 1.04 g of hard flour containing 1.09% of ash (1 Canadian wheat from Canada) followed by addition of 20 ml of distilled water thereto to prepare a 50 mg/ml aqueous solution of wheat flour.
- 2) The solution was cultured in a water bath at 37°C while shaking, and 0.5 ml portions of the solution were collected at 0, 1, 2, 3, 4, 6, 8, 10, 12, 20, 24 and 45 hours thereafter.

However, Soma USP 5,494,819 derives from a translation originally written in Japanese and the above section cited in the rejection contains some loosely translated words, thus the interpretation of the section is based on an imprecise translation, *rather than a logical determination about whether or not fermentation can occur under the disclosed conditions*. As will be shown below, logically fermentation cannot biologically occur and therefore the reference cannot legally anticipate the claimed invention. Therefore the rejection should be reconsidered in light of the explanation below.

Soma discloses "was cultured...while shaking" in Co1.5, lines 53-54. However, this process is explaining the operation in order to *isolate bacteria from wheat flour*. In fact, it is the *solution obtained from water and wheat flour*, and *bacteria cannot be cultured under this condition*. *Bacteria are cultured in standard agar culture media containing animal component which has been described later, then the colonies are observed*. When it is described "was cultured—while shaking" in Japanese language, it does not necessarily mean to "culture," but means to use a *concussion incubator*. The term "was cultured" was simply chosen in the process of translation work. *In view of this, Soma logically does not in fact disclose to ferment a material derived from an edible plant in culture media not containing animal-derived component*. The term "culture" is taken out of context of the actual disclosed medium present, which is not capable of "culturing" bacteria, as understood in English.

As a result, the disclosure referred to in the *reference is not properly interpreted as evidence of "culturing" because the fundamental ingredients necessary for a culture (agar culture media ) are not present*, as indicated by Soma. Thus Soma, as evidenced by Inagawa still fails to anticipate the invention as now claimed, namely "simultaneously culturing said facultative anaerobic gram-negative bacterium in a medium containing no component derived from an animal."

It is respectfully requested that the rejection be reconsidered in light of the above clarification of the disclosure of the references and withdrawn.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105.

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Respectfully submitted,

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